

United States Senate

WASHINGTON, DC 20510

August 2, 2022

VIA ELECTRONIC TRANSMISSION

The Honorable Alejandro Mayorkas
Secretary
U.S. Department of Homeland Security

Dear Secretary Mayorkas:

As you are aware, your September 30, 2021, memorandum entitled “Guidelines for the Enforcement of Civil Immigration Law,” was vacated by the U.S. District Court for the Southern District of Texas on June 10, 2022.

Your September 30th memorandum was, unfortunately, yet another in a long line of initiatives pursued by the Biden Administration to undermine the full, faithful, and robust enforcement of the immigration laws Congress has passed. As has been obvious since the day it was issued, your memorandum, and two earlier versions of it, constituted a de facto mandatory, blanket non-enforcement policy – masquerading as a discretionary “prioritization” scheme – by which DHS personnel were expected to abide.

As you are likely aware, section 236(c) of the Immigration and Nationality Act (8 U.S.C. § 1226(c)) states that the Department of Homeland Security (DHS) shall detain certain aliens who are inadmissible or deportable due to criminality or terrorism.¹ Section 236(c) also makes clear that such aliens may be released from custody only in very specific and narrow circumstances.²

Furthermore, section 241(a) of the Immigration and Nationality Act (8 U.S.C. § 1231(a)) states that DHS must remove an alien with a final order of removal within a period of 90 days and that, during the removal period, DHS shall detain the alien.³ The statute further states that, under no circumstances during the removal period, can DHS release certain aliens who are inadmissible or deportable due to criminality or terrorism.⁴

While there are inherent resource constraints on the ability of DHS – during any Administration – to detain all aliens covered by mandatory detention statutes during periods of high levels of border crossings, the Biden Administration has taken to using the rationale of “resource constraints” as a catch-all pretext to simply not enforce immigration laws to which it has an ideological aversion. The Biden Administration’s statements about resource constraints ring particularly hollow when it also continues to ask Congress to cut resources for immigration enforcement – particularly detention space.⁵

¹ 8 U.S.C. § 1226(c)(1).

² *Id.* at § 1226(c)(2).

³ 8 U.S.C. § 1231(a)(1)-(2).

⁴ *Id.*

⁵ U.S. Department of Homeland Security, “FY 2023 Budget in Brief” (March 24, 2022), at 40, available at https://www.dhs.gov/sites/default/files/2022-03/22-%201835%20-%20FY%202023%20Budget%20in%20Brief%20FINAL%20with%20Cover_Remediated.pdf; Eileen Sullivan, *Biden to Ask Congress for 9,000 Fewer Immigration Detention Beds*, N.Y. TIMES (March 25, 2022), <https://www.nytimes.com/2022/03/25/us/politics/biden-immigration-detention-beds.html>.

In that same vein, it is clear from data cited in the district court's opinion and order that your September 30th memorandum and other iterations of the Biden Administration's "enforcement priorities" memoranda have resulted in a dramatic increase in the number of cases in which U.S. Immigration and Customs Enforcement (ICE) declines to take custody of aliens with criminal records, including aliens covered by mandatory detention statutes enacted by Congress. I was disturbed to read in the district court's opinion and order that, while no more than a dozen ICE detainers were rescinded in Texas each year between FY2017-FY2020, the number has dramatically increased since the Biden Administration took office.⁶

Between Inauguration Day 2021 and February 15, 2022, data submitted to the district court indicated that, in Texas Department of Criminal Justice facilities alone, ICE rescinded detainers on 170 criminal aliens and later reissued detainers and took custody of only 29 of those individuals.⁷ Of the 141 criminal aliens for whom ICE never reissued a detainer, 95 were placed on parole supervision.⁸ At the time the court heard the case at hand, 17 of those criminal aliens had failed to comply with their parole supervision, four had committed new crimes, and at least one remained at large with a warrant for his arrest.⁹

According to data provided to the district court, in Louisiana during March and April 2021, ICE either rescinded detainers or returned to state custody at least four criminal aliens who were ultimately placed on "supervised release" or "supervision by probation and parole."¹⁰ Instead of being detained and removed from the country by ICE as required by the law, these four criminal aliens – whose crimes included indecent behavior with juveniles and sexual battery, possession of Fentanyl, aggravated second-degree battery, and aggravated assault with a firearm – were released into the community.¹¹

All of this despite the Biden Administration's insistence, including in your September 30th memorandum – that it prioritizes the apprehension and deportation of "noncitizens" who pose "a current threat to public safety, typically because of serious criminal conduct."¹² Given that the data points cited in the district court's opinion and order only represent data from two states over a relatively brief period of time, they raise a number of alarming questions regarding the impact of this Administration's reckless non-enforcement policies across the nation as a whole – especially as it relates to criminal aliens.

Accordingly, to assist with Congress' continued oversight of federal immigration policy and procedures, I ask that you provide answers to the following questions and data requests no later than August 23, 2022. Should you have questions, please contact my Committee staff at 202-224-5225. Thank you for your attention to this important matter.

⁶ *State of Texas v. United States*, No. 6:21-CV-00016, *16 (S.D. Tex. June 10, 2022).

⁷ *Id.* at *17.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *State of Texas*, *supra* note 6. at 17-18.

¹² Memorandum from Secretary Alejandro N. Mayorkas, U.S. Department of Homeland Security, on Guidelines for the Enforcement of Civil Immigration Law to Tae D. Johnson, Acting Director, U.S. Immigration and Customs Enforcement (September 30, 2021)(<https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf>).

1. How many detainers has ICE rescinded nationwide since January 20, 2021? Please break down the number of detainers rescinded by state.
2. Of the detainers rescinded nationwide since January 20, 2021, how many were rescinded for criminal aliens covered by Section 236(c) of the Immigration and Nationality Act? Please break down the number by state.
3. Of the detainers rescinded nationwide since January 20, 2021, for criminal aliens covered by Section 236(c) of the Immigration and Nationality Act, how many were reissued? Please break down the number by state.
4. For each detainer rescinded nationwide for a criminal alien covered by Section 236(c) of the Immigration and Nationality Act, please provide a complete enumerated list of the criminal or terrorism-related offenses committed by each such alien. Please break down the data by state.
5. Of the detainers rescinded nationwide since January 20, 2021, how many were for aliens with a final order of removal? Please break down the number by state.
6. How many detainers did ICE: (a) issue each year between FY2012 and FY2022 to date? and (b) rescind nationwide each year between FY2012 and FY2022 to date? Please break down the data by fiscal year.
7. Of the detainers rescinded by ICE nationwide each year between FY2012 and FY2022 to date, how many were for criminal aliens covered by Section 236(c) of the Immigration and Nationality Act? Please break down the number by fiscal year.
8. Of the detainers rescinded nationwide each year between FY2012 and FY2022 to date, how many were for aliens with a final order of removal? Please break down the number by fiscal year.
9. Regardless of whether or not the detainer was rescinded, on how many occasions since January 20, 2021, has ICE failed to assume custody of an alien against whom a detainer was lodged? Please break down the data by state.
 - a. How many of those occasions involved criminal aliens covered by Section 236(c) of the Immigration and Nationality Act? Please break down the data by state.
10. Regardless of whether or not the detainer was rescinded, for each occasion since January 20, 2021, in which ICE failed to assume custody of a criminal alien covered by Section 236(c) of the Immigration and Nationality Act against whom a detainer was lodged, please provide a complete enumerated list of the criminal or terrorism-related offenses committed by each such alien. Please break down the data by state.

Sincerely,

A handwritten signature in blue ink that reads "Chuck Grassley". The signature is fluid and cursive, with the first name "Chuck" and last name "Grassley" clearly legible.

Charles E. Grassley
Ranking Member
Senate Judiciary Committee

cc: The Honorable Tae D. Johnson
Acting Director
U.S. Immigration and Customs Enforcement